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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)
RAYMOND W. CLANTON)
LOREN F. SELZNICK)
)
)
)
For Construction Permit for a)
New FM Station on channel 279A)
in El Rio, California)

MM DOCKET NO. 93-87
File No. BPH-911216MC
File No. BPH-911216MD

To: Honorable John M. Frysiak
Administrative Law Judge

**OPPOSITION OF SELZNICK
AND COUNTERMOTION FOR SUMMARY DECISION**

Pursuant to 47 CFR § 1.251(b), Loren F. Selznick respectfully submits this Opposition and Countermotion to Raymond Clanton's "Motion for Summary Decision and Denial Of Application," filed December 23, 1993.

I. CLANTON'S MOTION SHOULD BE DENIED

1. Clanton's motion requests the Presiding Judge summarily to deny Selznick's application, without any hearing, on the twin assertions that (i) Selznick was not financially qualified when she certified her application on December 13, 1991 and (ii) that she is currently not financially qualified. ^{1/}

2. A party seeking summary decision on a designated issue has a heavy evidentiary burden. Not only must the party show

^{1/} Clanton's motion does not address the misrepresentation issue designated by the ALJ on September 30, 1993, nor the ALJ's companion forfeiture proceeding that also was initiated in the same ALJ's decision. But see Motion to Delete Forfeiture Proceeding, filed by Selznick on January 4, 1994.

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that there is no "genuine issue of material fact" left for determination at hearing but the moving party may not rest on "mere allegations." See 47 CFR ¶ 1.251(a)(1). The movant must essentially prove conclusively that:

"there is not the slightest doubt
as to the facts and that only the
legal conclusion remains to be resolved..."

Midwest St. Louis, Inc., 79 FCC 2d 519, 529 (1980), emphasis added. Moreover, not only must the basic facts be undisputed but the parties must not be in disagreement over material inferences to be drawn from the facts. See Big Country Radio, Inc., 50 FCC 2d 967, 968 (Rev. Bd. 1975). Furthermore, in considering any motion for summary decision, the Presiding Judge is required to "scrutinize carefully" the movant's arguments and to treat the papers of the opposing party with "considerable indulgence." See Summary Decision Procedures, 34 FCC 2d 485, 488 (1972).

A. Selznick's 1991 Financial Certification

3. Clanton first concedes that Ms. Selznick prepared a "detailed budget" prior to filing her 1991 application. See Clanton Motion at 3. Clanton asserts, however, that certain alleged "discrepancies" in her \$360,070 budget for the Class A FM station at El Rio are sufficient to warrant a finding that she was not financially qualified ab initio. Id. at note 3. The various and sundry cost items flyspecked by Clanton, such as Selznick's FCC hearing fee, legal costs and future FCC fees, are not decisional. The Commission long has held that these type of expenses "need not be taken into consideration" in determining an

applicant's financial qualifications. See HS Communications, Inc., FCC 93-516, released December 6, 1993, at 4 & note 8.

4. Next, Clanton asserts that Selznick's financial source, Joseph P. Dailey, was "unclear" about the amount of money that he committed to loan to Selznick in 1991. See Clanton Motion at 3-4. The evidence manifestly does not support Clanton's assertion. At his deposition last year, Mr. Dailey testified under oath that he and Ms. Selznick discussed in New York her cost budget and generally how it was broken down. See Appendix A hereto, at Tr. 32-33.^{2/} He further testified that she may have shown him the capital budget "early on." Id. at Tr. 29. Mr. Dailey recalled at his deposition that he thought in 1991 that Ms. Selznick's cost estimate was too conservative. Id. at 28. Moreover, his several references during his deposition to the sum of \$350,000 was explained by Mr. Dailey to be merely the general figure that they used in discussing his commitment. Id. at 57-8.^{3/} Furthermore, Mr. Dailey repeatedly emphasized during his two-hour deposition that he made an unconditional commitment in 1991 to loan Ms. Selznick the funds that she needed to construct the El Rio FM station and the two of them went over Mr. Dailey's balance sheet "item by item" to assure Ms. Selznick that he had at least \$500,00 in net liquid assets. Id. at 50-7; 65; 82; 85.

^{2/} Even Clanton concedes that the evidence establishes that Ms. Selznick told Mr. Dailey in 1991 "roughly how her figure was broken down." See Clanton's Motion at 3.

^{3/} It is certainly not unusual for professionals to speak in general terms about a "\$350,000" commitment when referring to a commitment that, specifically, totals \$360,070.

Finally, even Clanton acknowledges that Mr. Dailey accepted the figure of \$360,070 as the figure that Ms. Selznick gave him in 1991. See Clanton Motion at 4.

5. Clanton next asserts that Mr. Dailey and Ms. Selznick failed to discuss any of the terms under which Mr. Dailey would provide financing for Ms. Selznick's FM station. Id. at 5. Clanton conveniently ignores, however, that Mr. Dailey has testified in this proceeding that there was no need to discuss the "terms" expressly because both of them understood that the loan from Mr. Dailey would be under "reasonable commercial terms for a loan of this nature," i.e., for a start-up company. See Appendix A at Tr. 89. Ms. Selznick has confirmed that understanding. See Appendix B.

6. Clanton further asserts, in a series of factually erroneous contentions, that Ms. Selznick failed to adequately determine, prior to filing her application, that Mr. Dailey had sufficient "net liquid assets." See Clanton Motion at 5. **First**, Clanton suggests that Mr. Dailey testified at his deposition that Ms. Selznick did not know what would constitute "net liquid assets" when she filed her application in 1991. Id. In fact, Mr. Dailey testified merely that, in one particular phone conversation in November/December 1991 during which Ms. Selznick told him that he did not have to give her a written loan commitment, he was not sure that she knew "at that point" how the FCC defined "net liquid assets." See Appendix A at Tr. 52. Mr. Dailey explained that, by the third week of November 1991, he had dis-

cussed his willingness to finance Ms. Selznick's FM project with her on about three occasions. Id. at 47-8. In any event, by the time that she filed her application, Ms. Selznick had studied the Instructions to Form 301, consulted with her counsel and had an understanding of what the FCC expected in terms of "net liquid assets." See Appendix B. **Second**, Clanton concedes that Mr. Dailey's November 1991 balance sheet showed cash and cash equivalents of \$599,232 (see Clanton Motion at 6) but Clanton argues that there is no indication what Mr. Dailey's monthly mortgage payments were and, thus, that Ms. Selznick could not have known Mr. Dailey's "net" liquid assets (id.). It is sufficient to note that Mr. Dailey testified that he and Ms. Selznick reviewed his balance sheet ITEM BY ITEM--prior to the filing of her 1991 application-- in order to conclude that he had at least \$500,000 (FIVE HUNDRED THOUSAND DOLLARS) in available net liquid assets. See Appendix A at 52-53. Moreover, Mr. Dailey testified at his deposition that his monthly mortgage payments were about \$6,000. See Appendix A at Tr. 95. In short, there is no material question whether, at the time that Ms. Selznick's application was filed in 1991, Mr. Dailey's current assets [at least \$599,232] exceeded his only current liability [about \$6,000] by at least \$361,000 [the amount of money that Selznick's 1991 application stated was available from Mr. Dailey]. ^{4/} Cf. United Artists, 4

^{4/} In fact, the evidence shows that, at the time that Ms. Selznick filed her application in 1991, Mr. Dailey had available "net" liquid assets of at least \$593,232--more than \$200,000 more than Ms. Selznick needed under her "conservative" cost estimate.

RR2d 453, 458-9 ¶ 12 (Rev. Bd. 1964) (no financial qualifications issue where small amount of money must be obtained from substantially greater amount of assets).

7. Finally, Clanton asserts that because Mr. Dailey did not furnish Ms. Selznick-- prior to the filing of her 1991 application-- with a computer printout of his November 1991 balance sheet which they had reviewed on the phone item by item, then Selznick's application should be dismissed for an alleged lack of contemporaneous documentation. See Clanton Motion at 6-7. The assertion is unfounded. **First**, Clanton relies without citation on the contention that the absence of such documentation alone is a sufficient basis for finding that Selznick was not financially qualified ab initio. Id. The Commission recently has made it clear that such is not the case. See Emision De Radio Balmaseda, Inc., 8 FCC Rcd 4335, 4336 ¶ 5. In any event, for the Commission to deny an application in Selznick's circumstances--where an item-by-item review of a computer document was made and where the printout of that document is subsequently available when challenged--would be arbitrary and capricious.^{5/} Cf. Bechtel v. FCC, D.C. Cir. No. 92-1378, decided December 17, 1993 (FCC policies, such as reliance on "integration policy," that respond to Congressional mandates only superficially and are facially implausible are arbitrary and capricious). It would be particularly arbitrary for the FCC to deny Ms. Selznick's application for

^{5/} For example, the FCC could not reasonably require a visually impaired person to "see" documentation prior to signing the FCC application.

failure to have documentation of Mr. Dailey's net liquid assets in 1991 because the Form 301 Instructions on which she relied indicate that a written loan commitment is not required when an individual, rather than a financial institution, is the source for a financial certification. ^{6/}

B. Selznick's Current Financial Qualifications

8. Clanton asserts that Selznick is currently unqualified because \$360,070 allegedly remains her estimated costs and because she testified at her deposition that she was relying now on only \$40,000 from Mr. Dailey and on \$111,210 of her own net liquid assets. See Clanton Motion at 11. Clanton's assertion was premature. Although it is true that Ms. Selznick's prior Petition for Leave to Amend was denied by the Presiding Judge because of some allegedly omitted information, Ms. Selznick has filed a subsequent Petition for Leave to Amend and Revised Amendment that cures the prior omissions and should be granted by the Presiding Judge. In Ms. Selznick's Revised Amendment, she estimates total costs of \$109,460. ^{7/} Since the Revised Amendment demonstrates

^{6/} There is no merit to Clanton's suggestion (Motion at 10) that Selznick failed to comply with the Form 301 Instructions requirement that she have a copy of Mr. Dailey's balance sheet when she filed her 1991 application. As discussed, supra, Ms. Selznick reviewed Mr. Dailey's balance sheet item-by-item during a phone conversation prior to filing her application.

^{7/} See Petition for Leave to Amend, filed by Selznick on January 6, 1994, and Revised Amendment attached thereto. In Exhibit 5, ¶¶ 5-6 of Selznick's Direct Written Case, there are typographical errors regarding the amount of Ms. Selznick's current net liquid assets. Each reference to her net liquid assets should read \$100,700. See Erratum, filed by Selznick on January 6, 1994.

the current availability of \$100,700 from Ms. Selznick's own net liquid assets and the availability of \$40,000 in net liquid assets from Mr. Dailey, there remains no material issue regarding Selznick's current financial qualifications.

II. SUMMARY DECISION SHOULD BE GRANTED FOR SELZNICK

9. Not only should Clanton's motion for summary decision be denied, the Presiding Judge should grant Selznick's counter-motion for summary decision on all three added issues.


10. There remains no genuine issue of material fact with respect to whether or not Ms. Selznick misrepresented the facts with respect to her initial financial certification. Ms. Selznick seriously developed a conservative cost budget in 1991 and obtained an "unconditional" commitment from Mr. Dailey to loan the needed funds prior to signing her application on December 13, 1991. See discussion, supra, ¶¶ 3-8. To satisfy herself that Mr. Dailey--a close friend and law firm colleague--had the required net liquid assets to meet her \$360,070 cost budget, she engaged him in an item-by-item review of his balance sheet prior to filing her application. Id. After their review of his balance sheet disclosed that Mr. Dailey's net liquid assets exceeded \$500,000, she proceeded to sign her application. Ms. Selznick was entitled to rely on Mr. Dailey's oral representations in view of their close personal, business and professional relationships. Cf. Northampton Media Associates, 4 FCC Rcd 5518, 5519 ¶¶ 15-6 (1989). The misrepresentation issue should be summarily decided in Selznick's favor.

11. Likewise, the two financial issues should be decided in favor of Selznick. First, Mr. Dailey's balance sheet dated November 30, 1991, establishes that he had at least \$361,000 in net liquid assets available to Ms. Selznick when she submitted her 1991 application. See Appendix C hereto. Moreover, there is no genuine issue of material fact regarding whether or not Mr. Dailey made a firm commitment to loan the needed funds to Ms. Selznick. Indeed, Mr. Dailey testified at his deposition that he made an "unconditional" commitment to loan the funds to her. Hence, Selznick was financially qualified when she so certified in her 1991 application. Second, the recently filed Petition for Leave to Amend establishes that Ms. Selznick is financially qualified at the current time. See discussion, supra, at ¶ 8. Hence, summary decision in her favor on the second financial issue should be granted.

CONCLUSION

Clanton's motion should be denied and Selznick's counter-motion for summary decision on the three added issues should be granted.

Respectfully submitted,


Robert Lewis Thompson
PEPPER & CORAZZINI
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 296-0600

January 6, 1994

Counsel for Loren F. Selznick

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REVISED AMENDMENT

My application for a new FM station at El Rio, California (BPH-911216MD) is amended to substitute a revised budget and revised financial plan.

1. As early as the summer of 1985, when I had a solo legal practice in Staten Island, New York, I began to consider quitting my practice of law and resuming my radio career. At that time, I was subscribing to Broadcasting magazine. I attended the 1985 National Association of Broadcasters radio convention in Dallas, Texas. I visited a radio station for sale in Geneva, New York, with my former chief engineer at WVBR-FM, Ithaca, New York, John B. Hill, but we were not sufficiently satisfied with either the market or the facilities to make an offer. Shortly thereafter, I was offered a position as a law clerk for the Honorable Vito J. Titone, of the New York State Court of Appeals, and put my desire to purchase a radio station on hold.

2. In 1987, I began working at Breed, Abbott & Morgan as a litigation associate. It was still in my mind that I wanted to purchase and manage a radio station. In the spring of 1991, I again began to seriously consider quitting the practice of law and resuming my radio career. At about this time, I resumed my subscription to Broadcasting magazine and kept abreast of radio stations for sale and the prices of stations in various markets in Southern California, where I was interested in relocating.

3. In May, 1991, I took an exploratory trip to California with my friend, Susan L. Valle. At this time, I was aware of a radio station for sale in the Fresno area. Ms. Valle and I drove

around the state of California and spent some time in Fresno as well as looking at other areas of Southern California. We also stayed for part of the time at the California home of my law colleague and friend Joseph P. Dailey and his family, who had moved to Anaheim from New York City in early 1991. Mr. Dailey and I have practiced law together on nearly a daily basis since I joined his law firm, Breed, Abbott & Morgan, in 1987. Even after Mr. Dailey resigned his partnership in the firm and moved to California in 1991, he and I remained close friends and continued to practice law together on a daily basis. I see Mr. Dailey when he visits at the firm's New York office at least monthly and speak with him on the telephone nearly every day. I consider Mr. Dailey to be like a member of my extended family.

4. During the summer of 1991, I spoke with various media brokers whom I had found in Broadcasting magazine and Broadcasting Yearbook about my interest in acquiring and managing a radio station in Southern California. In the late summer of 1991, I traveled to California again, attended the NAB radio convention in San Francisco and again stayed at the home of Mr. Dailey and his family in Anaheim while I visited, with a broker, at least three radio stations which were on the market in Southern California.

5. When I discussed the possibility of buying a radio station with Mr. Dailey during the spring and summer of 1991, he told me about his previous interest in buying a radio station and he cautioned me against paying what he considered to be prices at

excessive multiples of cash flow for radio stations at that time. I ultimately made one offer for an AM-FM combination approximately one hour northeast of Los Angeles, but that offer was not accepted.

6. Shortly after my return to New York, I became aware of the El Rio, California FM filing window. I discussed this business opportunity with several friends, family members and law colleagues, including Mr. Dailey. In my initial discussions about El Rio with Mr. Dailey, he told me he thought that acquiring a license and building a radio station was a better idea than overpaying for one. As I continued to consider my El Rio FM options, another former law colleague -- Derrick Cephas -- told me that his investment group, which I knew owned radio stations, would be interested in providing financing for the potential El Rio FM project. About a month later, I mentioned to Mr. Dailey that I had not yet reached an agreement with the Cephas group and Mr. Dailey immediately offered to loan me the money for the El Rio FM project.

7. In late November or early December, prior to my signing the FM application, I told Mr. Dailey in one of our almost daily telephone conversations that I had estimated construction and start-up costs for the El Rio FM station to be slightly more than \$350,000 and I asked him if he still was willing to loan me that entire amount. Mr. Dailey assured me that he was and I took further steps to complete an FCC application for filing. After reviewing both the FCC Form 301 application and the Instructions

thereto and also discussing the application with my counsel Peter Tannenwald, Esq., of Arent, Fox, Kintner, Plotkin and Kahn, I called Mr. Dailey to further discuss the details of his financial commitment to my FCC application. When he asked if I needed a written commitment letter, I told him, based on my research, that I did not need a written commitment letter from him. At some point prior to filing my application, I told Mr. Dailey that he needed to have net liquid assets equal to the total amount of my estimated costs, \$360,070. Mr. Dailey subsequently pulled up his then-current Balance Sheet on his computer screen in California and, with me on the telephone from New York, we went over his net liquid assets item by item. A copy of Mr. Dailey's balance sheet as of November 30, 1991 -- within a few days or weeks of our telephone conversation -- is attached hereto as Appendix A. Based upon our item-by-item review of his balance sheet, I concluded that Mr. Dailey had substantially more than \$360,070 in net liquid assets. His cash and cash equivalents on hand exceeded \$360,070. I subsequently signed my Form 301 application on December 13, 1991, and it was filed at the FCC on December 16, 1991.

8. Although Mr. Dailey and I did not expressly discuss the precise terms of his proposed loan to my FM project, I understood from the outset that, in fairness to both of us, the loan would be based on standard commercial terms for start-up businesses, which I also have understood from the outset would mean a 60-month note, an interest rate of several points above prime,

secured by the station's assets and guaranteed by me personally.

9. Mr. Dailey subsequently told me that he discussed the El Rio FM project with his brother-in-law, Terry McNulty, who is in the radio business in Pennsylvania.

10. Mr. Dailey has testified under oath in this proceeding that he did not merely "express a willingness" to lend \$360,070 to me for the El Rio FM station, he told me prior to December 13, 1991 that he could and would lend me that amount of money. See Dailey Deposition Tr. 56-58; 65-67; 81-83, attached hereto as Appendix B. Mr. Dailey has confirmed under oath, he gave me an "unconditional" commitment to finance the FM project. See Appendix B at Tr. 65.

11. When I estimated in 1991 that my FM station's construction and initial operating costs would total \$360,070, I contemplated building a large FM station that would accommodate a 24-hour live service, would utilize all brand new equipment and would have substantial operating expenses reflecting such a large-station operation.

12. Approximately two weeks before lengthy settlement talks with Raymond Clanton broke down on approximately August 9, 1993, I began to restudy the viability of a proposed new FM station at El Rio. In settlement talks with Mr. Clanton, I had already come to recognize that my original cost estimate -- as stated in my December 1991 application -- was unreasonably and artificially high. Before settlement talks collapsed last summer, Mr. Clanton and I had discussed the need in today's competitive FM

environment to operate a lean FM station at El Rio. After discussions with four radio brokers and consultants last summer, I concluded that my 1991 proposal to buy all new equipment and to operate on a 24-hour live basis would not be a viable approach for a start-up station in the Class A FM station at El Rio in the 1993-94 competitive FM market. I concluded that my application should be amended to propose an initial operation of a satellite-delivered music service, augmented by live local news. I also concluded, based on professional advice from inter alia the California radio consulting firm of Miller & Associates, that most of the needed equipment for the El Rio station could be purchased used.

13. My revised construction budget totals \$79,460. See Revised Budget, attached hereto as Appendix C. The proposed tower site is a multi-use site where two-phase electric power is already available. With respect to the studio, I have been assured by Miller & Associates that the rental market in Ventura County is so competitive that I will be able to get studio improvements included in the rent base and up to six months of free rent with a multi-year lease. I have estimated first 90-day operating expenses at \$30,000. See Appendix C hereto. Because I will draw no salary for at least the first three months, use a contract engineer and rely on satellite-fed music programming, my monthly expenses during the first three months will be at most \$10,000. Hence, my total estimated cost is \$109,460. Id.

14. To meet my estimated costs, I am now relying principally on my own net liquid assets and for up to \$40,000 to be loaned to me by Joseph P. Dailey under the same terms as I discussed in ¶8, supra. Mr. Dailey confirmed to me that he will loan these funds if I so request. He also has so stated under oath in this proceeding. See Appendix B at Tr. 65.

15. My net liquid assets increased substantially between 1991-93. As of December 30, 1993, my net liquid assets total at least \$100,700. See Appendix D (liquidity analysis. The value of my two apartments has been established by written appraisals. See Appendices E and F. Since I propose selling my two apartments and handling the closings myself, no brokerage fees or closing costs will be involved. In addition, there is no need to budget for capital gains taxes upon the sales of my two apartments because there will be no gain. The current basis of my Bank Street apartment is approximately \$87,000. My basis in the 11th Street apartment is approximately \$126,000.

16. My available net liquid assets totalling at least \$100,700 and my loan commitment of \$40,000 from Mr. Dailey are sufficient to meet my estimated costs of \$109,460, with a budget cushion.

I affirm that the foregoing is true and complete to the best of my information and belief. Executed January 6, 1994.


Loren F. Selznick

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of

RAYMOND W. CLANTON

LOREN F. SELZNICK

**For Construction Permit for a
New FM Station on channel 279A
in El Rio, California**

ORIGINAL

Case No. 708 715

DEPOSITION OF:

JOSEPH P. DAILEY, ESQ.

MONDAY, NOVEMBER 22, 1993

10:05 A.M.

Reported by: MARY LOU CUSHNER

C.S.R. No. 6699

CRS

1 attractive market in the Oxnard area, which is not
2 that far from L.A., for \$350,000 and change. I saw a
3 built-in profit.

4 Q. Do you still feel that it will cost that
5 amount of money, approximately, to construct the radio
6 station?

7 A. I never -- I never believed it would cost
8 that much money. Loren Selznick told me that she was
9 assuming, for purposes of her application, that it
10 would cost approximately \$350,000, \$360,000, but that
11 was represented as a very conservative estimate, and
12 the actual costs would likely be substantially less.

13 Q. Is that still your belief?

14 A. Well, my belief now is based on advice that
15 she passed on to me from a broker who she consulted at
16 my suggestion and told her that it could be done for
17 less than \$100,000.

18 Q. What was the name of that broker?

19 A. She didn't tell me.

20 I suggested at some point last summer when
21 the negotiations with her and Clanton -- they were off
22 and on -- and I suggested at some point she had to
23 make the decision whether she was going to proceed by
24 herself because she basically had gotten herself in a
25 mindset where she and Clanton were going to go in as

1 partners. And then for one reason or another -- I'm
2 not sure exactly what happened -- but that fell by the
3 wayside, and she was again faced with going in by
4 herself. And she was wondering whether, well, maybe,
5 is this really worth it.

6 I said, "Well, go back to your original
7 premise and, that is, that for reasons which only the
8 government can understand, you have an opportunity to
9 acquire an asset at below-market value. I would
10 suggest, since there's been a great change in the
11 radio station market, that you go to a broker."

12 Q. Forgive me for interrupting. When did you
13 advise her of this?

14 A. As I told you, this was last summer. This
15 was somewhere around May, June, July, somewhere in
16 that period, and I suggested that she go to -- she get
17 in touch with a broker. I didn't have any in mind,
18 but she knows the radio market very well. She
19 subscribes to a number of publications. She knows who
20 the brokers are.

21 I said, "Go find one or two brokers in
22 California. Find out what the radio station market is
23 like. See what that million dollar number looks like
24 today and satisfy yourself that, if you go through
25 with this, that you'll have a very high degree of

1 general way.

2 Q. Okay. What does she -- let me restate that
3 question. Strike it.

4 What does Ms. Selznick know about your
5 financial situation presently?

6 A. I would assume she is probably pretty well
7 informed. The reason I say that is she knows that I
8 am practicing -- she knows about my law practice
9 because she works with me virtually on a daily basis
10 on that.

11 Q. Does she know --

12 A. She also knows my business because we're in
13 the process of raising funds for the business through
14 a private placement memorandum, and she is kind enough
15 to prepare, to assemble the private placement
16 memorandum and all the different versions with the
17 financial statements and everything; so she is aware
18 of the position of my business as well.

19 Q. Does she know how much money you make as a
20 private practicing attorney?

21 A. Well, she probably has a pretty good idea
22 because I believe she knows what I bill on an hourly
23 basis, and she sees the number of hours I'm working.
24 And moreover, she frequently -- I run my bills through
25 the law firm, and a lot of times they will send her

1 the checks because she sends me a Federal Express
2 package every day with litigation materials from the
3 cases we're working on, and they will send her the --
4 actually, it's a deposit slip. Funds are deposited in
5 my bank in New York, and a lot of times when that
6 happens, I'll ask her to be alert for the deposit slip
7 so she can tell me what the amount was so I can record
8 it in my books.

9 Q. What does she know about your debts
10 presently?

11 A. She knows what I've told her, which is my
12 only -- well, that's not true. I have one -- I have a
13 bank loan, but other than that my debt is the mortgage
14 on my house. She actually knows my debts as shown on
15 my balance sheet; so she knows what's on the balance
16 sheet.

17 Q. She knows of your debts from what she sees on
18 your balance sheet or sheets?

19 A. Right.

20 Q. Did you show her any other documentation
21 regarding your financial situation prior to December,
22 1991?

23 A. Did you say did I show her any
24 documentation? I don't believe so.

25 Q. After December, 1991, it would be the two

1 know, listen, I'll be glad to do it."

2 And it was either during that conversation --
3 there may have been a third conversation. In the
4 second conversation I basically confirmed that I was
5 going to do it because the first time I volunteered
6 it. Then she called back and wanted to be sure, you
7 know, I was really serious, and I told her I was. And
8 either that conversation or the following
9 conversation, I remember her asking me that under the
10 -- she had gotten an FCC lawyer, I guess, or she had
11 seen her application, and she needed some assurance
12 that I had the liquid assets to finance the
13 investment.

14 Q. When was this?

15 A. This, as I say, was either the second
16 conversation or the third conversation. There was
17 either two or three conversations. I'm not sure
18 which.

19 Q. Do you have an approximate date?

20 A. Yes, I do have an approximate date, and I
21 know I have an approximate -- I can date them all to
22 about the third week in November, 1991, and I do that
23 based on the conversation we're talking about what my
24 net worth was because part of my net worth was
25 dependent on receiving a check from my former law

1 firm, which was due me and had supposedly been sent
2 the month before. And Loren, as I told you, would get
3 the checks and send them out to me by Federal
4 Express.

5 And I had been waiting and waiting and
6 waiting for this check because it was for over
7 \$100,000, and as it turned out, the check -- some bozo
8 in the firm's accounting department had mailed the
9 check to me in Atlanta, Georgia, and it was lost for
10 six weeks. I remember very well because I had the
11 second or third conversation, whatever it was -- in
12 any event, the conversation we're talking about my
13 finances took place the day that the check finally
14 arrived, and I put that around the third week in
15 November. But that's how I'm able to date it because
16 I remember now telling her that I was now \$100,000
17 wealthier than I was in the morning when I got up.

18 Q. What did this check that you're speaking of
19 represent?

20 A. Oh, I'm trying to think. It may have been a
21 capital because I was getting several checks from the
22 law firm. I think it was -- it may have been my
23 partnership capital. If not, it was a profit-sharing
24 plan.

25 Q. Were you working for that law firm at that